U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 31 2007

LIN 03 198 51341

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reopened the matter on motion to amend the initial decision and subsequently denied the petition a second time. The matter is now before the Administrative Appeals Office on certification. The director's decision will be withdrawn and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. On the petition, the petitioner indicated that the proposed employment was as a research associate. We acknowledge that the petitioner has subsequently been promoted. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel referenced certain factual mistakes, such as the petitioner's occupation and pronouns referencing the petitioner. Counsel concluded that these mistakes demonstrated that the director had not thoroughly examined the record of proceeding. As stated above, the director reopened the matter and amended the petitioner's occupation and the relevant pronouns. On certification, counsel asserts that the director erred in allowing the same adjudicator to review the multiple petitions filed in behalf of the petitioner and in allowing this same adjudicator to review the petition after the appeal was filed. Counsel requests a *de novo* review by this office and asserts that the initial concerns raised on appeal have not been resolved by the amended decision.

In addition, counsel requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique issues of law to be resolved. In this matter, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

At the outset, we note that counsel alleges incompetence at the Service Center level, requesting that the adjudicator responsible for the decision be fired. Specific allegations, such as asserting that the adjudicator failed to review the record in this matter appear unfounded. The use of boilerplate language, per se, is not evidence that the record was not reviewed. Many petitions in the same classification involve similar issues and it is unreasonable, to say nothing of inefficient, to expect the director to craft entirely original responses to similar evidence and assertions. Moreover, the gender of the petitioner is not material to the merits of the petition. We note that on page 4 of the original decision, the director correctly identified the petitioner's school and individuals supplying letters in this

matter. Thus, the original decision does not appear to be a case where the entire decision is based on the facts of a different case.

Nevertheless, while we strongly disagree with counsel that the decision represents gross incompetence and do not agree that all of the evidence carries the weight ascribed by counsel, we are persuaded, as will be discussed in more detail below, that the director failed to give sufficient weight to the numerous letters from independent experts in the field provided initially and in response to the request for additional evidence.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Biochemical Pharmaceuticals from Shandong Medical University in July 1996. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, cancer research, and that the proposed benefits of her work, improved and less toxic treatment for leukemia and other cancers, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original

innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

When the petition was filed in June 2003, the date by which the petitioner must establish her eligibility, the petitioner was completing her Ph.D. at the Medical College of Ohio. While the petitioner is relying primarily on the significance of her work while a Ph.D. student in the laboratory of [redacted] the alien's past record need not be limited to prior *work* experience. Specifically, this benefit does not require a quantified threshold of experience or education. *Id.* at 219, n.6.

[redacted] asserts that the petitioner "uncovered the mechanism by which folate is up-regulated in leukemia cells," providing a less toxic strategy for treating leukemia. Specifically, this work provides guidance for targeting leukemia cells with chemotherapy. These results were published in *Blood.* In response to the director's request for additional evidence, the petitioner submitted evidence that independent research teams had cited this work. While the petitioner must demonstrate the significance of this work as of the date of filing, we note that the *initial* reference letters, including six letters from independent experts in the field, all attest to being previously aware of this work and its significance.

[redacted] further addresses the petitioner's work with ChIP technology, asserting that the petitioner has achieved what others could not using this technology. ChIP technology is significant because it "provides a bridge connecting in vitro and in vivo methodologies that can be used to study the gene regulation in vivo." The petitioner utilized this technology to "answer important questions about the mechanism of folate receptor regulation." An independent reference, [redacted] of Harvard Medical School, explains that this work provides "guidance in up-regulating folate receptors, which is crucial to efficiently apply targeting treatment to cancer." [redacted] a research scientist at Harvard Medical School, asserts that the beneficiary's models developed using ChIP technology have helped other research scientists, including [redacted]

Finally [redacted] discusses the petitioner's development of yeast models expressing human folate receptors. [redacted] not only asserts that these models are being used by "many investigators," but confirms using them himself.

The remaining reference letters, including the six independent letters submitted initially and the 10 independent letters submitted in response to the director's request for additional evidence, all provide similar information and need not be repeated here. While the submission of independent letters does not create a presumption of eligibility, the content of all of the letters is extremely persuasive in this classification.

Additional evidence would have significantly bolstered the petitioner's case. For example, [redacted] and some of the independent references discuss a patent application that is not in the record. The record also lacks letters from any entity expressing an interest in licensing this innovation. As stated above, the mere act of submitting a patent application does not warrant a national interest waiver. *Matter of New York State Dep't of Transp.,* 22 I&N Dec. at 221, n.7. While several references seem to imply that the petitioner's work already has clinical applications, the record lacks letters from hospitals

or oncologists applying or investigating her results. Nevertheless, as stated above, some of the petitioner's independent references do appear to have been influenced by the petitioner to at least some degree. These claims are supported by a moderate citation record.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the biomedical community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The petition is approved.